

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SEAN D. RIES, JOHN R. MURRAY, )  
PHILIP C. HENRY, and others )  
similarly situated, )

Plaintiffs, )

v. )

ALLMERICA FINANCIAL )  
CORPORATION, ALLMERICA )  
FINANCIAL LIFE INSURANCE AND )  
ANNUITY COMPANY, and )  
FREDERICK H. EPPINGER, JR., )

Defendants. )

Civil Action No. 04-CV-40179

**PLAINTIFFS' MOTION FOR LEAVE OF COURT TO FILE RESPONSE TO  
DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR  
COUNSEL FEES PURSUANT TO 28 U.S.C. § 1447**

NOW COME, Plaintiffs, Sean D. Ries, John R. Murray, Philip C. Henry, and others similarly situated, by and through their undersigned counsel, and files this Motion for Leave of Court to Respond to Defendants' Memorandum in Opposition to Plaintiffs' Motion For Counsel Fees.

The Plaintiffs seek Leave of Court to file a Response in opposition to the Defendants' Memorandum in Opposition to Plaintiff's Motion for Counsel Fees Pursuant to 28 U.S.C. §1447. Plaintiff's reply accompanies this motion.

**ARGUMENT**

Plaintiffs seek leave of Court to File a Response to the Defendants' Memorandum in Opposition to Plaintiff's Motion for Counsel Fees Pursuant to 28 U.S.C.

§1447. The argument asserted by the Defendants that the 14 day filing requirement as set forth in Rule 54 (d) (2) (B) of the Federal Rules of Civil Procedure bars the filing of Plaintiffs' Motion for Counsel Fees lacks merit and is incorrect.

In their response, the Plaintiffs would set forth authority why its Motion for Counsel Fees is timely and appropriate.

Respectfully submitted,

SEAN D. RIES, JOHN R. MURRAY, and  
PHILIP C. HENRY  
By their attorneys,

/s/ David M. Osborne

David M. Osborne (BBO #564840)  
DWYER & COLLORA, LLP  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 371-1000  
(617) 371-1037

TUCKER ARENSBERG, P.C.

William C. Ries, Esquire  
Robert L. McTiernan, Esquire  
Jonathan S. McAnney, Esquire  
Ron R. Parry, Esquire  
Robert R. Sparks, Esquire

Dated: July 6, 2005

**RULE 7.1 CERTIFICATION**

I, David M. Osborne, hereby certify pursuant to Local Rule 7.1 that on July 5, 2005 and July 6, 2005 I attempted to contact Brett Budzinski, counsel for the defendants, in an attempt to narrow or resolve the issues raised in this motion, but was unable to reach him.

/s/ David M. Osborne  
David M. Osborne